Let's Get the Future of TV Right

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Let's Get the Future of TV Right [1]

By John Bergmayer [2] | February 06, 2012

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One of the benefits of the FCC's often-laborious process of rulemaking is that it allows new issues to be discovered and resolved. This is what has happened in the Commission's proceeding on a seemingly-arcane issue: "encryption of the basic tier."

Today cable systems have to provide the "basic tier"--which is basically just broadcast stations-- unencrypted. (A quick note: "Basic tier" cable is not the same thing as "basic cable," which usually means the basic tier plus the most popular cable networks.) That means you don't need a set-top box or other decoder to access them. It's possible to subscribe to *just* the basic tier (which might be attractive if, for instance, you can't get decent over-the-air reception), or you might watch basic tier stations on a second or third TV in your house without needing a set-top box. In the late eighties and early nineties, increasing numbers of cable systems started to encrypt their signals, and the rule was adopted to allow people to at least access some programming without renting a converter box.

A bunch of cable systems already have a waiver that allows them to encrypt the entire channel lineup, and all of them want the option. They make several arguments, which boil down to their belief it'll save them money, and give them more flexibility. The rule change would only be applicable to all-digital systems, and it also seemed like a good way to encourage remaining analog cable systems to upgrade their networks.

Thus, the FCC is considering scrapping the rule that requires the basic tier to be unencrypted. This seems like a relatively minor ask, so Public Knowledge decided to support the idea of a rule change--after all, it makes more sense to change a rule rather than to waive it system by system. We asked only [13] that people who used the basic tier be kept whole--to avoid bill-shock for subscribers who may suddenly be hit with a box rental fee, and to avoid making equipment investments obsolete.

Two issues have come up in the proceeding, though, that are not adequately addressed by either our or the FCC's proposed mitigations. One, institutional users [14] may rely on unencrypted signals. For instance, schools might have TVs in their classrooms, and probably can't afford to rent set-top boxes for each one. Two, Boxee has submitted evidence [15](based on direct measurement) that 40% of the users of their live TV product use unencrypted basic tier cable signals.

That these issues have arisen is a testament to the usefulness of notice-and-comment rulemaking proceedings that engage industry and the public. If the FCC had continued to waive the encryption requirement piecemeal, Boxee users might never have had a chance to be heard. But now that they have made their concerns known, both their concerns and those of institutional users deserve a full hearing.

No one has a right for FCC rules to continue unchanged forever. And it's not ideal for the FCC to determine the technologies that cable systems use--it should be able to promote its goals in more flexible ways. But at the same time, the FCC is faced with a choice. It has to deal with the facts as they are, and the Boxee Box is the kind of device that it has said it wants to promote. It's recognized that TVs haven't kept up with the innovation that characterized personal computers and mobile devices, and has pledged to increase competition in that space. It's also recognized that more competitive video devices, that allow people to more easily watch broadband video on their TVs, would provide healthy competition to cable and satellite while encouraging broadband adoption.

The Boxee Box is an early vision of the kind of next-generation video device that's needed to push the TV industry forward. It's come from a private company, not one that has cut special deals with cable systems in every town. It seamlessly integrates Internet video, broadcast TV (from over-the-air or unencrypted cable), and a user's own video files. It provides a unique user interface and social features that rented set-top boxes can't match. It would be perverse if the FCC actively *thwarted* this and similar devices.

Boxee is not a large company with a dedicated DC office that monitors every proceeding. Because of this it has only put its concerns before the FCC recently, after the closing of the formal comment period. But its concerns deserve a full consideration. Thus, before moving forward with a rule change, the FCC ought to put out a further notice seeking comment on these new issues. It should consider what mitigation measures could be adopted that would allow Boxee users to continue to access TV on their devices.

As PK has argued since the beginning, the long-term solution to video device competition and innovation is AllVid [16]. It may be that there is no way to adequately address every concern without also adopting the more comprehensive change that AllVid represents--which suggests that the encryption issue should be folded into the AllVid proceeding. Or, it may turn out that there is a low-cost and simple way to allow Boxee Boxes (and similar devices from El Gato, Silicon Dust, and more) to continue working while AllVid is still pending. I don't know--and neither does the FCC. But I do know that the FCC should try to get to the right answer, not just the most expedient one, which is why it should make sure it does that here.

If you use unencrypted cable, click here [17] and let the FCC know about it.

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